IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGEMENT NO. 346 OF 2003

IN

SUMMARY SUIT NO. 188 OF 2003

Bosch Rexroth (India) Ltd. .. Plaintiff

versus

Bemco Jacks & Allied Products Ltd. .. Defendant

...

Mr.N.R. Engineer i/b Desai & Diwanji for the plaintiff.

None for the defendant.

CORAM : D.G. KARNIK,J.

DATED : 21st February 2005.

P.C.:

1. Heard the learned counsel for the plaintiff. None present for the defendant.

2. The defendant placed purchase order on the

plaintiff for supply of goods on 9th February 1999. In pursuance of the said purchase order the plaintiff supplied the goods to the defendant under the invoice dated 5th April 1999, worth Rs.1,51,531/-. The defendant failed and neglected to make the payment, but under cover of the letter dated 21st December 2000, sent to the plaintiff three cheques, two for Rs.25,000/- each and third for Rs.50,000/- towards part payment. One cheque of Rs.25,000/- was encashed by the plaintiff. However, remaining two cheques were dishonoured by the defendant's bank. The plaintiff has therefore filed this suit for recovery of the balance price of the goods and interest.

3. As there is no clause of interest in the purchase order, the plaintiff through its learned counsel gives up the claim of interest prior to the date of the filing of the suit. Statement is recorded and accepted.

4. The learned counsel for the plaintiff tenders original documents under a list. The documents are taken on record and collectively marked "X'. They contain original purchase order, order acceptance, office copies of the invoice, original cheques issued

by the defendant as also the office copy of the notice and acknowledgement.

5. The learned counsel for the plaintiff also tenders affidavit proving service. Despite service, the defendant has not filed an application for leave to defend nor filed any affidavit in reply. In the circumstances, the averments made in the plaint are deemed to be accepted. The plaintiff is entitled to a decree under clause (a) of sub rule (6) of Rule 3 of Order 37 of the Code of Civil Procedure. Hence, I pass the following order:

5. The Summons for Judgement is partly made absolute and the suit of the plaintiff is decreed as follows:-

6. The defendant shall pay to the plaintiff a sum of Rs.1,23,379/- being the principal sum due together with interest thereon at 9% p.a. from the date of the suit till payment and all costs of the suit.

7. Issue Court fee refund certificate as per rules.

D.G. KARNIK, J